

JAN 26 2006

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

ELECTION
COMMISSION
SECRETARIAT

2006 JAN 26 A 11:34

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 5601

DATE FILED: Nov. 2, 2004
DATE ACTIVATED: Oct. 13, 2005
DATE OF NOTIFICATION: None
LAST RESPONSE RECEIVED: None

EXPIRATION OF SOL: Oct. 2009

COMPLAINANT.

John T. Poprik, Mike Fitzpatrick
for Congress

RESPONDENTS:

Voter Research Group/Unknown
Respondents¹

RELEVANT STATUTES:

2 U.S.C. § 441d
11 C.F.R. § 100.26
11 C.F.R. § 100.28
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

None

I. INTRODUCTION

This matter concerns telephone calls that were allegedly made to individuals during Mike Fitzpatrick's campaign for election to Congress in October 2004. One set of calls was described in the Complaint as a "push poll," and the second set of calls was described in the Complaint as an "automated phone call making lies" about Mike Fitzpatrick's voting record. Apparently neither set of calls included an appropriate disclaimer. In some instances, the calls stated the name of the entity purportedly making the calls; however, we have been unable to locate any information about that entity and it

¹ We have been unable to locate any information about the potential respondent, "Voter Research Group," and therefore no respondent has been notified of the complaint.

is unclear whether it actually exists. No disclaimer or other attribution to any other entity, political committee or individual was stated on the calls.

Based on the complaint, as well as review of available information, we recommend that the Commission: (1) find reason to believe that unknown respondents violated 2 U.S.C. § 441d by placing the telephone calls without including a disclaimer

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleged that two sets of phone calls were made. The first set of calls was allegedly made "by a live caller conducting a push poll regarding outsourcing." Complaint, p. 1. The complaint does not provide any additional information regarding the substance or context of these alleged calls. The second set of calls was allegedly an "automated phone call making outright lies." Complaint, p. 1. The complaint included an apparent transcription of one call:

Hello. This is the Voter Research Group with a one question Pennsylvania poll. In the last 4 years Pennsylvania has lost over 74,000 jobs. Many of the jobs lost have been outsourced to countries like China and India. In the race for congress, Mike Fitzpatrick has a record of voting for bills that grant tax credits for companies that send American jobs overseas. Mike Fitzpatrick has also voted against extending unemployment benefits and voted against overtime pay for thousands of workers. Now please press 1 if you support Mike Fitzpatrick on jobs and outsourcing issues. Or press 2 if you think it is time for a change and you support Ginny Schrader who says she will end corporate tax breaks and keep jobs here in Pennsylvania.

Complaint, Exhibit. The complaint does not make any allegation as to who made the calls, does not name any respondents, and there is no allegation that Ms. Schrader or her campaign committee was involved. We do not know how many calls were made or to

1 whom We also do not know the time period in which these calls were made, but assume
2 they were made approximately at the time the complaint was filed (October 2004).

3 The Act requires that political committees and individuals making certain
4 communications provide a disclaimer as specified in the statute and regulations. 2 U.S.C.
5 § 441d. A political committee "making a disbursement for the purpose of financing any
6 communication . . . through any other type of general public political advertising" must
7 place a disclaimer in the communication. 2 U.S.C. § 441d. Furthermore, the regulations
8 state that any "public communication" for which a political committee makes a
9 disbursement must contain a disclaimer. 11 C.F.R. § 110.11. Finally, if the calls were
10 paid for by a person other than a political committee, the calls must have contained a
11 disclaimer if the person made a disbursement for a communication that included express
12 advocacy or solicited a contribution through certain types of media or through general
13 public-political-advertising, or-made-a-disbursement-for an electioneering-communication.
14 2 U.S.C. § 441d(a).

15 A public communication includes a communication by telephone bank to the
16 general public. 11 C.F.R. § 100.26. A telephone bank means that more than 500 calls of
17 an identical or substantially similar nature were made within a 30-day period. 11 C.F.R.
18 § 100.28. The Explanation and Justification published after the effective date of the 2002
19 Bipartisan Campaign Reform Act ("BCRA") amendments to the Act also makes clear
20 that a telephone bank is considered a type of general public political advertising. See
21 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) ("each form of communication specifically
22 listed in the definition of 'public communication,' as well as each form of communication
23 listed with reference to a 'communication' in 2 U.S.C. 441d(a), must be a form of

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1 'general public political advertising '") Therefore, any candidate, political committee or
2 their agent(s) making any disbursement for telephone bank calls must include a
3 disclaimer on the calls.

4 At this time, it is unclear who or what entity paid for and made the calls.

5 Furthermore, with respect to the disclaimers here, we do not know whether more than
6 500 calls were made.

7
8 Furthermore, the example of the calls given in this complaint appears similar to calls in
9 other matters pending before the Commission (*see* MURs 5584 and 5585) and, when
10 taken all together, all three sets of calls could total more than 500.² In addition, although
11 we do not know whether all calls were made within a 30-day period, because the
12 complaints were filed in late October, again, it seems likely that the calls were made in
13 September-October 2004 immediately preceding the November 2004 election.

14
15 Assuming both points to be true, if the calls were authorized or paid for by a
16 political committee or its agent(s), then the calls should have included a disclaimer.
17 2 U.S.C. § 441d(a). The call transcribed in the complaint states that an entity called
18 "Voter Research Group" made the calls. However, the complaint provided no
19 information about this entity and we were unable to locate any information regarding
20 such an entity. We are uncertain at this time whether it actually exists at all.

21 Based on the information provided in the complaint and our own independent
22 review of publicly available information, it appears a violation of section 441d may have

² If we discover that the calls alleged here are, in fact, related to the calls in 5584 and/or 5585, then we will recommend that the Commission merge this MUR with MURs 5584 and 5585.

1 occurred Because the only entity that appears to have been involved with the calls is
2 Voter Research Group and we have been unable to locate any information about that
3 entity, we recommend that the Commission find reason to believe that "unknown
4 respondents" violated section 44Id of the Act, and authorize an investigation into these
5 calls.

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III. PROPOSED INVESTIGATION

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IV. RECOMMENDATIONS

1. Find reason to believe that unknown respondents violated 2 U.S.C. § 441d.
2. Approve the appropriate Factual and Legal Analyses.
- 3.
4. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

1/26/06
Date

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